Nos. 01-1118, 01-1119

SEP 17 2002

IN THE

Supreme Court of the United States

JOSEPH SCHEIDLER, ANDREW SCHOLBERG, TIMOTHY MURPHY, and THE PRO-LIFE ACTION LEAGUE, INC.,
Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.,
Respondents.

OPERATION RESCUE,
Petitioner,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF *AMICUS CURIAE* MOTOROLA CREDIT CORPORATION IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Do federal courts have the power to order injunctive relief in civil actions brought by victims of racketeering under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964(c)?

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INTEREST OF THE AMICUS

Motorola Credit Corporation appears as *amicus curiae* to urge this Court to affirm the court of appeals' ruling that district courts have power to order injunctive relief in civil suits brought by victims of racketeering under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964(c).[1]

Motorola Credit Corporation (hereinafter, "Motorola") is the financing affiliate of Motorola, Inc., a world leader in the manufacture and servicing of cellular telecommunications systems. Motorola is currently a plaintiff in a civil RICO suit where it has alleged that a family of racketeers and their associates defrauded Motorola of more than $2 billion in loaned funds. The district court preliminarily found the defendants had perpetrated a "massive swindle" through a pattern of racketeering activity that included wire fraud and extortion. *Motorola Credit Corp. v. Uzan*, 202 F. Supp. 2d 239, 242 (S.D.N.Y. 2002). The court further found the fraud was ongoing, and had even been carried into the court itself. *Id.* at 248. The court thus entered a preliminary injunction designed to stop the fraud and protect Motorola from further harm while litigation was pending. *Id.* at 242, 248. That preliminary injunction is currently on appeal. *Motorola Credit Corp. v. Uzan*, No. 02-7566 (2d Cir. argued Aug. 5, 2002).

Motorola thus has a substantial interest in the first issue in this case—the availability of injunctive relief in suits brought under § 1964(c). As a victim of the kind of racketeering activity RICO was designed to combat, Motorola has a strong

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[1] All parties have given blanket consent to the filing of *amicus* briefs in this case, in letters filed with the Clerk of this Court on May 8 and 9, 2002. No counsel for any party authored this brief in whole or in part. No person or entity other than Motorola Credit Corporation made a monetary contribution to the preparation or submission of this brief.

interest in seeing that federal district courts have the power to enjoin acts of racketeering. In light of its experience, Motorola has a further interest in assuring that this Court preserves in civil RICO actions the district courts' power to award relief *pendente lite*.

SUMMARY OF ARGUMENT

1. "[T]he right to grant injunctive relief in private civil actions in accordance with traditional principles of equity jurisdiction is one of the equitable powers given to federal courts by the Judiciary Act of 1789." *Motorola Credit Corp. v. Uzan*, 202 F. Supp. 2d 239, 243 (S.D.N.Y. 2002). This Court has long made clear it will not find a restriction on such traditional equitable powers absent clear congressional command. *See Califano v. Yamasaki*, 442 U.S. 682, 705 (1979). Where Congress has created a statutory right of action to enforce legal rights, the Court presumes the availability of all appropriate remedies, equitable and legal, unless Congress expressly indicates otherwise. *Franklin v. Gwinnett County Pub. Schs.*, 503 U.S. 60, 65-66, 70-71 (1992).

In RICO, a statute designed to provide new remedies to combat organized crime, Congress has not restricted any traditional equitable remedies. In § 1964(a), Congress vested federal courts with jurisdiction over civil RICO actions and authorized a variety of equitable remedies to "prevent and restrain" racketeering violations. In § 1964(b), Congress eliminated an impediment to the government's pursuit of equitable relief by removing the common law requirement of a showing of irreparable harm. In 18 U.S.C. § 1964(c), Congress expressly created a right of action for victims of racketeering, providing that "[a]ny person injured . . . by reason of a [RICO] violation . . . may sue therefor." As the district court hearing Motorola's civil RICO case concluded,

> [w]hether or not the language of § 1964 expressly confers this power [to grant injunctive relief] as

> 'unambiguously' as the Seventh Circuit asserts, it nowhere expressly denies courts this power in private civil actions, and thus the normal presumption favoring a court's retention of all powers granted by the Judiciary Act of 1789 prevails.

Motorola, 202 F. Supp. 2d at 244.

Congress' express grant of such remedies as treble damages and attorneys' fees does not constitute an express rejection of pre-existing remedies. Congress had a good reason to mention treble damages and attorneys fees in § 1964(c): as departures from the common law, those remedies are not available unless prescribed by statute. Congress' grant of *additional* statutory remedies does not imply any intent to *subtract* remedies already available.

Petitioners would like to infer from Congress' *silence* regarding pre-existing remedies that it did not intend for them to be available. This Court has repeatedly rejected that view. *See Franklin*, 503 U.S. at 68; *Yamasaki*, 442 U.S. at 705; *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 11 (1942). The cases cited by petitioners that invoke such reasoning concern whether to imply a private *right of action*. But whether a private right of action exists is "analytically distinct" from the question of what remedies are available under a right of action that is provided by statute. *Franklin*, 503 U.S. at 65-66. Where, as here, the right of action is express, the Court does not ask whether Congress intended to create the remedy at issue. Instead, it presumes all remedies are available, unless Congress has expressly indicated otherwise.

RICO contains no such express indication. In fact, it contains precisely the opposite: an explicit statutory directive that RICO be construed broadly for remedial purposes. This liberal-construction mandate makes it impossible to con-

clude that § 1964(c) eliminated traditional equitable remedies through silence.

Analogies to nearly century-old precedent under the antitrust laws cannot substitute for an express denial of equitable powers. When the antitrust statutes were drafted, law and equity were divided, making it logical that legal and equitable remedies would be separate. When RICO was enacted in 1970, law and equity had long been merged, such that § 1964(c) could provide legal and equitable remedies in the same cause of action. Moreover, by that time, injunctive remedies had long been available in private antitrust suits, and were thus a recognized part of the antitrust remedies Congress sought to apply in RICO. This Court has observed that Congress enacted RICO under the criminal code, rather than the antitrust title, to avoid subjecting racketeering victims to restrictive antitrust precedents. Indeed, RICO's statutory directive to construe its remedial provisions broadly makes it a wholly different statute than the antitrust laws.

Inferences from RICO's legislative history are similarly unavailing. The argument for restricting injunctive relief rests on the withdrawal of an amendment that would have confirmed *several* additional remedies, including injunctive relief for racketeering victims. This Court has warned that such failed legislative enactments are thin support for restrictive statutory interpretation, especially where (as here) there are many possible reasons for the failure to enact, including the possibility that the remedies were already available under the bill.

2. This case concerns the reach of RICO's civil remedies in the context of socially divisive protest activity. But the Court's decision will determine the statute's remedial reach in all contexts, including Congress' core area of concern in enacting RICO: the protection of American businesses against the predations of organized crime. Motorola's experience as a victim of racketeering illustrates the strong

need for injunctive remedies to stop racketeering activity. Limiting civil RICO's relief to damages would severely hamstring victims' ability to protect themselves through civil RICO actions. It would be illogical for Congress to have intended that racketeering victims be able to recover treble damages for their injuries, but be unable to stop ongoing racketeering causing further injury.

3. Motorola's experience also illustrates the strong need for interim, as well as permanent, injunctive relief. Federal courts have always possessed the power to preserve the status quo in cases pending before them, both to prevent irreparable harm and to protect their ability to award meaningful relief. This Court has long recognized this inherent power of federal courts, and has refused to infer restrictions on the power absent express instruction from Congress.

Interim relief is especially necessary in the RICO context, to protect victims from criminals determined to continue their racketeering activity even as litigation proceeds against them. Federal courts surely are not powerless to stop ongoing crimes and frauds by parties in cases before them. Rather, they are vested with the power to prohibit continuing racketeering activity and prevent ongoing harm during the pendency of civil actions under § 1964(c).

ARGUMENT

I. RICO DOES NOT RESTRICT FEDERAL COURTS' INHERENT EQUITABLE POWER TO AWARD INJUNCTIVE RELIEF

A. Federal Courts Possess Inherent Equitable Power to Redress Injury Through Injunctions

Since enactment of the Judiciary Act of 1789, federal courts have had the power to award injunctive relief under their equitable jurisdiction. *Grupo Mexicano de Desarrollo v. Alliance Bond Fund*, 527 U.S. 308, 318-19 (1999). This

power inheres in the courts' power to remedy invasions of legal rights: "From the earliest years of the Republic, the Court has recognized the power of the Judiciary to redress injuries actionable in federal court . . . ." *Franklin v. Gwinnett County Pub. Schs.*, 503 U.S. 60, 66 (1992). The principle is one of English common law: "If a statute gives a right, the common law will give a remedy to maintain that right . . . ." *Ashby v. White*, 1 Salk. 19, 21, 87 Eng. Rep. 808, 816 (Q.B. 1702), *quoted in Franklin*, 503 U.S. at 66-67.

Moreover, where Congress has created a statutory right of action to enforce a legal right, the availability of *all* remedies, both legal and equitable, is presumed: "it is . . . well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." *Bell v. Hood*, 327 U.S. 678, 684 (1946); *see also Deckert v. Independence Shares Corp.*, 311 U.S. 282, 288 (1940) ("[T]he power to make the right of recovery effective implies the power to utilize any of the procedures or actions normally available to the litigant according to the exigencies of the particular case."); *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 239 (1969) ("The existence of a statutory right implies the existence of all necessary and appropriate remedies.").

In *Franklin*, this Court surveyed the "deep roots" of this "traditional presumption in favor of all appropriate relief." 503 U.S. at 66, 69. It squarely rejected the argument that this presumption had been abandoned. The Court acknowledged it had "not always distinguish[ed] clearly between a right to bring suit and a remedy available under such a right." *Id.* at 66. It emphasized, however, that

> the question of what remedies are available under a statute that provides a private right of action is 'analytically distinct' from the issue of whether such a right exists in the first place. *Davis v. Passman*, 442

> U.S. 228, 239 (1979). Thus, although we examine the text and history of a statute to determine whether Congress intended to create a right of action, *Touche Ross & Co. v. Redington*, 442 U.S. 560, 575-576 (1979), we presume the availability of all appropriate remedies unless Congress has expressly indicated otherwise.

Franklin, 503 U.S. at 65-66.

In applying this traditional presumption, this Court will not lightly infer any restriction of federal courts' equitable authority. *Miller v. French*, 530 U.S. 327, 336 (2000). "Absent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction." *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979). As this Court concluded in *Franklin*, "[t]he general rule . . . is that absent clear direction to the contrary by Congress, the federal courts have the power to award any appropriate relief in a cognizable cause of action brought pursuant to a federal statute." 503 U.S. at 70-71.

B. By Creating Expansive New Remedies In RICO, Congress Did Not Restrict Courts' Equitable Power

In light of the traditional presumption in favor of all appropriate remedies, federal courts are empowered to grant injunctive relief in RICO civil actions unless Congress has clearly directed to the contrary. Congress plainly has not done so. Section 1964(c) authorizes those injured by racketeering activity "to sue therefor." It also gives remedies (treble damages and attorneys fees) that are above and beyond those available at common law. Congress' grant of these *additional* remedies does not indicate any intent—much less an express direction—to *subtract* remedies already available.

The provision of additional remedies was an integral part of the congressional plan. RICO "was intended to provide new weapons of unprecedented scope" against organized crime. *Russello v. United States*, 464 U.S. 16, 26 (1983). Having found then-existing sanctions and remedies "'unnecessarily limited in scope and impact,'" Congress acted to provide "'enhanced sanctions and new remedies.'" *Beck v. Prupis*, 529 U.S. 494, 496 (2000) (quoting Pub. L. No. 91-452, § 1, 84 Stat. 922, 923 (1970)); *accord Russello*, 464 U.S. at 27; *United States v. Turkette*, 452 U.S. 576, 588-89 (1981).

Among the new legal weapons enacted was § 1964, which provided for civil remedies against those engaged in racketeering activity. Section 1964(a) gave the district courts jurisdiction and broad remedial powers. It provided that "[t]he district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders," § 1964(a), and gave a non-exclusive list of such orders, that tracked the activities prohibited by § 1962 (*e.g.*, ordering individuals to divest their interests in certain enterprises, restricting their future activities and investments in similar endeavors or enterprises, or ordering dissolution or reorganization of enterprises).

On its face, § 1964(a) makes these remedies available to any person with a right to sue under the statute. It contains no restriction as to who may invoke courts' jurisdiction to "prevent and restrain" RICO violations. Nor does it suggest any limitation on the availability of injunctive relief. Its phrase "including but not limited to" indicates intent to make certain types of orders available, without restricting traditional remedies. Thus, "subsection (a) of 1964 made express what was already inherent—that in civil RICO actions, as in other civil actions, the federal district courts have broad equitable powers." *Motorola Credit Corp. v. Uzan*, 202 F. Supp. 239, 244 (S.D.N.Y. 2002). "If anything, subsection (a) extended the courts' equitable jurisdiction in

civil RICO actions beyond what was granted by the Judiciary Act of 1789 . . . ." *Id.*

Section 1964(b) gave the Attorney General authority to "institute proceedings under this section," and authorized the court to grant *pendente lite* relief in such actions brought by the government. This authorization removed any obstacles that might have arisen for the government under traditional equity jurisprudence, which held that equity could be invoked only for the protection of property. *See In re Debs*, 158 U.S. 564, 583, 593 (1895); *In re Sawyer*, 124 U.S. 200, 210 (1888); 1 John Norton Pomeroy, Jr., *Equity Jurisprudence* § 100 (4th ed. 1918). Under the traditional view, absent a property interest, equity would not enjoin a crime. *See Debs*, 158 U.S. at 593; *Sawyer*, 124 U.S. at 210; 5 Pomoroy, *supra*, § 1890; 11A Charles Alan Wright et al., *Federal Practice & Procedure* § 2942, at 70-71 (2d ed. 1995) ("Wright & Miller"). Moreover, because the Government was not the "victim" of the racketeering acts, it could have trouble showing irreparable injury or inadequacy of a remedy at law, or the inadequacy of criminal proceedings as a remedy. *See* Wright & Miller § 2942, at 70-71; *Developments in the Law—Injunctions*, 78 Harv. L. Rev. 994, 1016 (1965).

Section 1964(b) solved these problems for the government:

> It was plainly the intention of Congress in adopting Section 1964 to provide for injunctive relief against violations of Section 1962 without any requirement of a showing of irreparable injury other than that injury to the public which Congress found to be inherent in the conduct made unlawful by Section 1962. It is also obvious that Congress did not intend to require a showing of the inadequacy of the remedy at law.

United States v. Cappetto, 502 F.2d 1351, 1358-59 (7th Cir. 1974); *see also* G. Robert Blakey, *The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg*, 58 Notre Dame L. Rev. 237, 331 & n.212 (1982).

While § 1964(b) removed impediments for the government, § 1964(c) gave victims of racketeering a right of action against those who injured them, with an added treble damages remedy: "Any person injured in his business or property by reason of a violation of section 1962 of this chapter *may sue therefor* in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee . . . ." § 1964(c) (emphasis added). This provision "creates a civil cause of action for '[a]ny person injured in his business or property by reason of a violation of [RICO].'" *Beck*, 529 U.S. at 495.

The Petitioners and the United States argue that only the government has been granted a general right of action, because § 1964(b) reserves to the Attorney General the power to "institute proceedings under this section." But § 1964(c) similarly gives to the victims of racketeering a right "to sue *therefor*"—a right to sue for the injuries arising from a violation. In his *amicus* brief (at 7), the Solicitor General omits "therefor" from his quotation of the statute, and thereby misses the point that this subsection provides a general right to sue.[2]

There is no reason to believe that a victim's right to "sue []for" injury caused by a RICO violation is inherently more limited than the government's right to "institute proceedings." Contrary to suggestion, "proceedings" is not an exclusive word for invoking "equity," nor are "suits" limited only to "damages." *E.g.*, Scheidler Br. at 41 n.30. Rather, "[t]he Judiciary Act of 1789 conferred on the federal courts jurisdiction over 'all *suits . . . in equity*.'" *Grupo Mexicano*, 527 U.S. at 318 (quoting Judiciary Act of 1789 § 11, 1 Stat.

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[2] It is possible "therefor" refers to the "violation," rather than the injury. Either reading leads to the same result: a right of action to redress the injury resulting from the violation.

78) (emphasis added). At least since the merger of law and equity in 1938, a "suit" brought pursuant to a statutory cause of action may invoke both legal and equitable remedies. *See* Fed. R. Civ. P. 18; 4 Wright & Miller § 1043. Unless otherwise expressly limited, § 1964(c)'s authorization for racketeering victims to "sue therefor" creates a statutory action for which all traditional remedies, both legal and equitable, are available.

Congress did not include any such express limitation in §1964(c). Those opposing injunctive relief for racketeering victims argue that the grant of treble damages in this provision *implies* that no other remedies are available. On its face, this theory does not identify an express direction.

Instead, the argument is one of negative implication: "the identification of a damages and fees remedy . . . logically carries the negative implication that *no other remedy* was intended to be conferred on private plaintiffs." *Religious Tech. Ctr. v. Wollersheim*, 796 F.2d 1076, 1083 (9th Cir. 1986). This argument is often invoked by the maxim "*expressio unius exclusio alterius*." *E.g.*, Operation Rescue Br. at 9-11; *Chevron U.S.A. v. Echazabal*, 122 S. Ct. 2045, 2049 (2002) ("expressing one item of an associated group or series excludes another left unmentioned") (citation and alteration marks omitted).

Section 1964(c), however, is poor ground for application of the "*expressio unius*" maxim. First, there is no language in § 1964(c) suggesting exclusiveness of the treble damages remedy. *See Echazabal*, 122 S. Ct. at 2050. The language "*and* shall recover threefold the damages" is language of inclusion, not exclusion: it means plaintiffs may recover treble damages *in addition to* whatever other remedies may be available.[3] The language contains no suggestion that other

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[3] Operation Rescue argues it is "bizarre" to read "and" as inclusive rather than exclusive. Operation Rescue Br. at 21 & n.23 (quoting a 1983

remedies are excluded. *See* G. Robert Blakey & Scott D. Cessar, *Equitable Relief Under Civil RICO: Reflections on Religious Technology Center v. Wollersheim: Will Civil RICO Be Effective Only Against White-Collar Crime?*, 62 Notre Dame L. Rev. 526, 544-46 (1987).

Second, § 1964(c) does not contain any "series of terms from which an omission bespeaks a negative implication." *Echazabal*, 122 S. Ct. at 2050. This Court has cautioned that such a series is an "essential . . . ingredient": without it, there is no ground to apply the *expressio unius* rule. *Id.* Section 1964(c), however, contains no comprehensive list of remedies, from which equitable relief is notably missing. Instead, it contains a general right of action, coupled with a nonexclusive specification of a treble damages remedy in addition to whatever remedies are ordinarily available.

Third, there is an excellent reason why Congress would specify treble damages and attorneys' fees but not other remedies in § 1964(c): those remedies are not available unless prescribed by statute. 22 Am. Jur. 2d *Damages* § 813 (1988); *Key Tronic Corp. v. United States*, 511 U.S. 809, 814-15 (1994); *see* Dan B. Dobbs, *Law of Remedies* § 3.12 (2d ed. 1993) (surveying multiple damages statutes); 2 Frederick Pollock & Frederic William Maitland, *The History of English Law* 522 & n.1, 524 (2d ed. 1923) (double and treble damages were created by statute, apart from damages that could be awarded by the King's justices or by jury verdict).

Congress' prescription of *additional* statutory remedies, while remaining silent about traditional common law remedies, furnishes no ground for inferring that those ordinary legal and equitable remedies were eliminated *sub*

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district court opinion). But it is hardly bizarre that "and" connotes addition, not limitation. *See Merriam-Webster's Collegiate Dictionary* 43 (10th ed. 1997) ("*and* . . . *1*—used as a function word to indicate connection or addition . . .").

silentio. "[D]enial of such [equitable] power is not to be inferred merely because Congress failed specifically to repeat the general grant of auxiliary powers to the federal courts." *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 11 (1942). "That a statute does not authorize the remedy at issue 'in so many words is no more significant than the fact that it does not in terms authorize execution to issue on a judgment.'" *Franklin*, 503 U.S. at 68 (quoting *Deckert*, 311 U.S. at 288). For all of these reasons, it is a mistake to read § 1964(c) by negative implication.

The precedents cited by Petitioners in support of the negative implication argument are cases where this Court considered whether to imply a *right of action*. *E.g.*, *Alexander v. Sandoval*, 532 U.S. 275, 279 (2001); *Transamerica Mortgage Advisors v. Lewis*, 444 U.S. 11, 14-15 (1979). For example, Petitioners rely heavily on this Court's statement in *Transamerica* that "where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it." 444 U.S. at 19 (1979). But in *Transamerica*, "remedy" referred to the availability of a *private cause of action*. *See id.* at 14-15. As this Court later clarified, whether a *right of action* exists is "analytically distinct" from what *remedies* are available when Congress has already created the right of action. *Franklin*, 503 U.S. at 65-66. Where Congress has created a right of action expressly, this Court does not inquire to determine what remedies were provided. Instead, it "presume[s] the availability of all appropriate remedies unless Congress has expressly indicated otherwise." *Id.*[4]

It is undisputed that RICO creates a private right of action for victims of racketeering. Thus, those relying on

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[4] The Ninth Circuit relied on *Transamerica* in *Wollersheim*, 796 F.2d at 1088. *Wollersheim*, however, pre-dated this Court's *Franklin* decision clarifying the distinction between rights of action and remedies.

Transamerica and its progeny have the presumption exactly reversed. The question is not whether the text and history of RICO reflect intent to create an injunctive remedy. It is whether, having created a right of action to redress injury to private citizens, Congress clearly directed an elimination of that traditional remedy. Congress manifestly did not eliminate any remedy in the language of section 1964. Hence, the traditional presumption in favor of all appropriate remedies prevails.

C. Congress' Mandate That RICO Be Construed Broadly Confirms That The Statute Does Not Restrict Traditional Remedies

Even if the language and structure of § 1964, construed in light of the general presumption recognized in *Franklin*, did not by themselves establish that courts retain their traditional equitable powers, Congress eliminated any doubt by specifically directing that RICO's remedial provisions be construed broadly.

The mandate is contained in the statute itself: "The provisions of this title shall be liberally construed to effectuate its remedial purposes." Pub. L. No. 91-452, § 904(a), 84 Stat. 947 (1970). Such a mandate enacted in a statute was unprecedented in federal criminal law. *Russello*, 464 U.S. at 27. This Court has given significant weight to Congress' directive. *See Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497-98 (1985) ("RICO is to be read broadly. This is the lesson not only of Congress' self-consciously expansive language and overall approach, but also of its express admonition . . . .") (citation omitted); *Rotella v. Wood*, 528 U.S. 549, 557 n.3 (2000).

This Court has also recognized that RICO's "'remedial purposes' are nowhere more evident than in the provision of a private action for those injured by racketeering activity." *Sedima*, 473 U.S. at 498. Although the liberal-construction

mandate may not be dispositive in determining the *substantive* elements of a RICO offense under § 1962, *Reves v. Ernst & Young*, 507 U.S. 170, 183-84 (1993), "if Congress' liberal-construction mandate is to be applied anywhere, it is in § 1964[(c)], where RICO's remedial purposes are most evident." *Sedima*, 473 U.S. at 492 n.10.

Under this liberal construction mandate, one cannot interpret RICO's *addition* of a treble damages remedy as having silently displaced the district courts' traditional equitable powers. As Judge Rakoff explained in his opinion awarding Motorola preliminary injunctive relief in its current RICO action, "it would be extraordinary indeed if Congress, in enacting a statute that Congress expressly specified was to be 'liberally construed to effectuate its remedial purposes,' intended, without expressly so stating, to deprive the district courts of utilizing this classic remedial power in private civil actions brought under the act." *Motorola*, 202 F. Supp. 2d at 244 (citation omitted).

This conclusion is reinforced by the provision that follows the broad construction mandate: "Nothing in this title shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this title." Pub. L. No. 91-452, § 904(b), 84 Stat. 947. Congress thus expressly stated its intent that RICO supplement, not supplant, otherwise existing law. Blakey, *supra*, 58 Notre Dame L. Rev. at 268 n.92; *cf. Turkette*, 452 U.S. at 586 n.9.

Where Congress (i) created a right of action to redress injury, (ii) added *additional* remedies, *and* (iii) expressly directed that the statute be construed liberally for remedial purposes, it is inconceivable that the statute could thereby have silently removed an inherent remedial power courts have possessed since 1789.

D. RICO's Remedies Are Not Narrowed By Restrictive Antitrust Precedent

Petitioners and the United States argue that because the Sherman Act and the Clayton Act were interpreted nearly 100 years ago not to include injunctive relief for private plaintiffs, this Court should give § 1964(c) a similar construction. Again, it is doubtful that this kind of argument by analogy could create the clear command necessary to overcome the traditional presumption in favor of all appropriate remedies.

In any event, this interpretation is wrong. "[T]he mere borrowing of statutory language does not imply that Congress also intended to incorporate all of the baggage that may be attached to the borrowed language." *Tafflin v. Leavitt*, 493 U.S. 455, 462 (1990) (citation omitted) (refusing to apply RICO/Clayton Act analogy).[5] There are a number of reasons why RICO's civil remedy provision should not be narrowed by application of early interpretations of the antitrust statutes.

First, the structure of the statutes is different. Section 4 of the Sherman Act, which became Section 15 of the Clayton Act, set out the courts' jurisdiction, their equitable remedial

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[5] In *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992), this Court said it assumed that because Congress used the same words in § 1964(c) as in the Clayton Act, it intended them to have the same meaning. *Id.* at 268 (inferring "proximate cause" requirement). But in *Tafflin*, this Court rejected the same reasoning, where the question was exclusive or concurrent jurisdiction over RICO actions. 493 U.S. at 462. Likewise, this Court rejected the antitrust analogy in *Sedima*, refusing to impose a "racketeering injury" requirement similar to "antitrust injury." 473 U.S. at 498-99. Thus, application of antitrust precedents is far from automatic. Earlier interpretations must yield where different circumstances suggest the words were used with different intent. *See District of Columbia v. Carter*, 409 U.S. 418, 421 (1973); *Erlenbaugh v. United States*, 409 U.S. 239, 244-45 (1972); *Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932).

authority, and a limitation of suits to those brought by the government *all in the same section of the statute*:

> Sec. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, . . . under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. . . .

Sherman Act, ch. 647, § 4, 26 Stat. 209 (July 2, 1890) (current version at 15 U.S.C. § 4 (2000)); *see also* Clayton Act, ch. 323, § 15, 38 Stat. 736 (Oct. 15, 1914) (current version at 15 U.S.C. § 25 (2000)). This structure, which limited the availability of equitable relief in the same section that authorized it, caused the Court to conclude the act was intended to limit direct proceedings in equity to those instituted by the United States. *See United States v. Cooper Corp.*, 312 U.S. 600, 607-08 (1941); *D.R. Wilder Mfg. Co. v. Corn Prods. Refining Co.*, 236 U.S. 165, 174 (1915); *Minnesota v. Northern Secs. Co.*, 194 U.S. 48, 71 (1904).

By contrast, RICO grants jurisdiction and equitable authority in § 1964(a), which by its terms is not limited to any class of plaintiff. The Attorney General's authorization to institute proceedings is contained in a separate subsection, § 1964(b), which stands parallel to the right of action granted to racketeering victims in § 1964(c). By separating RICO's grant of remedial authority from its specifications of who may sue, Congress made the equitable remedies authorized in § 1964(a) available to any party given a right of action under § 1964.

Second, both the Sherman Act (1890) and the Clayton Act (1914) were enacted prior to the merger of law and equity that occurred with the adoption of the Federal Rules of Civil Procedure in 1937. *See* Fed. R. Civ. P. 2 & adv. comm.

notes; 4 Wright & Miller § 1042. All but one of the cases rejecting a private injunctive remedy under the antitrust laws were also decided before the law/equity merger.[6] At that time, it would have made sense to interpret Sections 4 and 7 of the Sherman Act as providing separately for equitable relief and damages, given that such remedies were pursued in entirely distinct actions. *See* Armistead M. Dobie, *Handbook of Federal Jurisdiction and Procedure* § 147, at 581 (1928) ("[A]n equitable claim . . . cannot be enforced on the law side of the federal District Court, and the same principle prevents the joinder in this court of legal and equitable causes of action in a single suit."). By the time RICO was enacted in 1970, however, it was long accepted that both legal and equitable remedies could be invoked in the same case. *See* Fed. R. Civ. P. 18; 4 Wright & Miller § 1043; *see also Franklin*, 503 U.S. at 70-71. There is no reason to ascribe to the 91st Congress, acting in 1970, the same intent to provide separate legal and equitable remedies that the 51st Congress would have had when it enacted the Sherman Act in 1890.

Third, Congress was certainly aware in 1970 that for the preceding 55 years, the antitrust laws *did* contain a right of action for injunctive relief by private parties. When it recodified the Sherman Act as the Clayton Act in 1914, Congress responded to this Court's decisions rejecting a private injunctive remedy by expressly adding one in Section 16 of the Clayton Act. *See California v. American Stores Co.*, 495 U.S. 271, 287 (1990) (noting "§ 16 filled a gap in the Sherman Act by authorizing equitable relief in private actions"). While it is true that Congress is presumed to be

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[6] *See Gen. Inv. Co. v. Lake Shore & M.S. Ry.*, 260 U.S. 261, 286 (1922); *Geddes v. Anaconda Copper Mining Co.*, 254 U.S. 590, 593 (1921); *Paine Lumber Co. v. Neal*, 244 U.S. 459, 471 (1917); *D.R. Wilder*, 236 U.S. at 174; *Northern Secs.*, 194 U.S. at 71. *Cooper Corporation*, decided in 1941, followed the established body of prior authority. 312 U.S. at 608 n.9.

aware of the background against which it legislates, *see Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 268 (1992); *Merrill Lynch, Pierce, Fenner & Smith v. Curran*, 456 U.S. 353, 378-79 (1982), in 1970 that background included an injunctive remedy available to private antitrust plaintiffs, and had done so for half a century. References in RICO's legislative history to bringing antitrust remedies to bear on organized crime, *see, e.g., Agency Holding Corp. v. Malley-Duff & Assocs.*, 483 U.S. 143, 151-52 (1987); *Sedima*, 473 U.S. at 487, thus should not be read as precluding an injunctive remedy as well.

Fourth, Congress enacted RICO under the criminal code, not the antitrust laws, to *avoid* subjecting private RICO plaintiffs to restrictive antitrust precedents. *See Sedima*, 473 U.S. at 478-79. In *Sedima*, the Second Circuit had done what Petitioners and the United States advocate here: analogized directly from the Clayton Act to RICO, *see id.* at 485, to restrict the reach of RICO. This Court concluded that by doing so, "the court below created exactly the problems Congress sought to avoid." *Id.* at 499.

Finally, RICO's liberal construction mandate removes any doubt. The Sherman and Clayton Acts contained no such directive. Whatever inferences might be appropriate in the antitrust context, they do not apply where Congress has explicitly directed courts to resolve doubts in favor of effectuating RICO's remedial purpose: to eliminate racketeering activity. *E.g., Rotella*, 528 U.S. at 557; *Russello*, 464 U.S. at 26-27.

E. RICO's Legislative History Provides No Basis For Inferring Intent to Remove District Courts' Equitable Jurisdiction

The argument against injunctive relief for victims of racketeering has been constructed largely on the basis of inferences from RICO's legislative history. Resort to legislative history is inappropriate, however, where a statute's

meaning is clear from its language. *Dep't of Housing & Urban Dev. v. Rucker*, 122 S. Ct. 1230, 1234 (2002).

Even if relevant, the legislative history fails to provide decisive guidance. The Ninth Circuit reasoned that Congress' failure to adopt an amendment that contained an explicit injunctive remedy indicated an intent not to include the remedy. *Wollersheim*, 796 F.2d at 1086 (drawing "clear message" that Congress "*rejected* the addition of any such provision"). But the premise that Congress "rejected" the express civil injunctive remedy is simply incorrect. As this Court has pointed out, Congress did not "reject" Representative Steiger's amendment—instead, it was withdrawn without a vote. *See Malley-Duff*, 483 U.S. at 154; *see also* 116 Cong. Rec. 35346 (Oct. 7, 1970).

Moreover, although Representative Poff spoke of an "additional civil remedy" contained in the amendment, the amendment in fact contained *several* new civil remedies—not only express injunctive relief for private parties, but also a damages action for the government, and a right of the government to intervene in suits by private parties. *See* 116 Cong. Rec. 35346; *Malley-Duff*, 483 U.S. at 155. Finally, Representative Steiger noted his belief that the bill as it stood might already include the remedy he proposed, and that his amendment had been intended to confirm it. 116 Cong. Rec. at 35347 (noting that "under the bill as it now stands they may have this option."). In these circumstances, Congress' failure to enact Representative Steiger's proposal cannot be read as a "rejection" of an injunctive remedy in private civil actions, any more than it was a "rejection" of his proposed five-year statute of limitations. *See Malley-Duff*, 483 U.S. at 154-55.

In any event, Congress' failure to enact the Steiger Amendment is "a particularly thin reed on which to rest the interpretation of [the] statute." Pet. App. 12a (No. 01-1118). The Seventh Circuit was correct to heed this Court's caution

that "[f]ailed legislative proposals are 'a particularly dangerous ground on which to rest an interpretation of a prior statute.'" *Solid Waste Agency v. United States Army Corps of Eng'rs*, 531 U.S. 159, 169-70 (2001) (citations omitted). In light of Representative Steiger's statement withdrawing his amendment, this Court's statement in *Central Bank of Denver v. First Interstate Bank*, 511 U.S. 164 (1994), is particularly apt: "'Congressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction, including the inference that the existing legislation already incorporated the offered change.'" *Id.* at 187 (citation omitted). The legislative history simply cannot carry the weight Petitioners give it.

In sum, the language and structure of § 1964, the presumption of all appropriate remedies for a statutory action to redress injury, this Court's reluctance to infer restriction of courts' traditional equitable powers, and Congress' liberal construction mandate in the RICO statute itself all make clear that the district courts' inherent equitable power to issue injunctions has not been removed in actions brought under § 1964(c).

II. INJUNCTIVE REMEDIES ARE NEEDED BY VICTIMS OF ORGANIZED RACKETEERING ACTIVITY

In this case, the arguments regarding injunctive relief under RICO are colored by concerns about expansive use of the statute to address socially divisive controversies such as abortion protests.[7] But any decision to restrict the remedies available will affect RICO's reach in all contexts, including claims by racketeering victims against traditional organized

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[7] *See* Scheidler Br. at 1-2; Operation Rescue Br. at 1-3; Brief *Amicus Curiae* of Life Legal Defense Foundation, at 6-19; Brief *Amicus Curiae* of Seamless Garment Network et al., at 25-30.

criminal groups. Injunctive relief is often vital in such cases to protect racketeering victims from further injury.

This Court should not restrict the remedial reach of RICO because of concerns about unusual uses of the statute.[8] Instead, the Court should be mindful of the strong need for broad RICO remedies, including injunctive remedies for racketeering victims, to address Congress' core area of concern: the threat posed to American businesses by organized racketeering activity. *See Beck*, 529 U.S. at 496 (quoting Pub. L. No. 91-452, § 1, 84 Stat. 922-23); *Turkette*, 452 U.S. at 588-89.

The need for injunctive relief in dealing with defendants who engage in classic racketeering is well illustrated by the events underlying Motorola's RICO lawsuit. In Motorola's case, the district court found that a group of defendants used their family business empire to defraud Motorola of over $2 billion lent to one of the family's corporations, through a pattern of racketeering activity that included, "among numerous other means," wire fraud and extortion. *See Motorola*, 202 F. Supp. 2d at 245-48.[9]

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[8] This Court has frowned on efforts to narrow RICO's substantive reach through judicial construction, despite use of the statute in situations removed from traditional organized crime. *See Nat'l Org. for Women v. Scheidler*, 510 U.S. 249, 262 (1994); *Sedima*, 473 U.S. at 499. The Court should resist similar arguments for narrowing RICO's remedial reach.

[9] The district court did not reach its conclusions lightly. Judge Rakoff, the author of a leading RICO treatise (Jed S. Rakoff & Howard W. Goldstein, *RICO: Civil and Criminal Law & Strategy* (1989)), was well aware of the tendency of litigants to invoke RICO in garden-variety business disputes. He thus stated at the beginning of his opinion that "[w]hen business deals go sour, both sides are apt to cry 'fraud,' and courts know better than to take such claims at face value." *Motorola*, 202 F. Supp. 2d at 241-42. Nonetheless, after conducting a six-day evidentiary hearing, Judge Rakoff concluded that Motorola had shown each element of a RICO claim by clear and convincing evidence, *id.* at 244-45, and that "every preliminary indication is that the defendants . . .

More important, the district court found the risk of further injury necessitated a preliminary injunction. For example, it found the defendants diverted much of the lent money to unauthorized uses, for the benefit of other companies they owned and controlled, leaving over $1 billion unaccounted for. *Id.* The court enjoined any further diversion of assets, to prevent further injury to Motorola and to preserve the assets available for repayment. *Id.* at 248.

The district court also found that defendants had engaged in corporate manipulation to dilute Motorola's collateral. Motorola had bargained for its loans to be secured by a controlling stake in the borrowing corporation. When it appeared Motorola might foreclose on its collateral, the defendants secretly tripled the borrowing corporation's outstanding stock, and then transferred the new shares—representing two-thirds of the corporation's value—to a different company they owned. *Id.* at 246-47. Later, defendants acted further to diminish the voting rights of Motorola's remaining pledged shares, in an attempt to ensure that Motorola could never recover the controlling interest for which it had bargained. *Id.* at 247-48. Again, the district court used its injunctive powers to put a stop to the ongoing fraud. The court ordered the stock pledged as collateral to be deposited in the court's registry, and prohibited further efforts to diminish the control rights or the value of the stock. *Id.* at 248 & n.4. The defendants did not comply, and have been held in civil contempt. *Motorola Credit Corp. v. Uzan*, 2002 WL 1963301 (S.D.N.Y. Aug. 22, 2002).

When Motorola discovered the dilution and began to investigate, the defendants "retaliated by use of fear and extortion," causing a lawyer for their family to initiate baseless criminal charges in Turkey against Motorola

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perpetrated, and continue to perpetrate, a rather massive swindle." *Id.* at 242.

executives. *Motorola*, 202 F. Supp. 2d at 247. Judge Rakoff found defendants' use of fear of Turkish criminal proceedings to force concessions on repayment of the overdue loans to be "a classic extortion scheme." *Id.*

The district court further found that by repeatedly representing to the court an intention to restore plaintiffs' collateral, "while taking no actions to fulfill their pledge and instead offering sham excuses and false testimony," defendants had "carried their fraud into the court itself." *Id.* at 248.

The harms suffered by Motorola are the model of what Congress had in mind when it passed RICO: economic harm visited on an American business by racketeers acting through a pattern of organized criminal activity. *See, e.g., Beck*, 529 U.S. at 496; *Turkette*, 452 U.S. at 588 (quoting congressional purpose and findings). Moreover, the persistent efforts of the defendants in Motorola's case to conceal, continue, and intimidate others from dismantling their scheme, even after the frauds were discovered, are classic characteristics of traditional organized racketeering. The continuing nature of such racketeering activities shows that damages alone are an inadequate remedy. If the victim and the court cannot stop the racketeering, the victim will have to sue again and again to be made whole. Equity has always stood ready to stop such continuing violations, to prevent the need for such a multiplicity of lawsuits. *See* 11A Wright & Miller § 2944, at 89-90; *Injunctions, supra*, 78 Harv. L. Rev. at 1001.

Congress enacted the private civil remedy in RICO not only to compensate racketeering victims, but to enlist them as "'private attorneys general,' dedicated to eliminating racketeering activity." *Rotella*, 528 U.S. at 557; *accord Sedima*, 473 U.S. at 493. Racketeering victims cannot perform that role, or even protect themselves from further injury, if courts are deprived of their injunctive powers. Even the Ninth Circuit in *Wollersheim* recognized "the force of the

. . . argument that a private injunctive remedy would permit an injured party to put an immediate stop to racketeering behavior that threatens his or her business with economic destruction before the business has been brought to its knees." *Wollersheim*, 796 F.2d at 1088-89. The court recognized that the government's resources to bring injunctive actions are often limited, and that "precluding enforcing parties from employing the weapon of equitable relief partially hamstrings the statute's effect." *Id.* at 1089.

Businesses threatened by racketeering activity need the ability to invoke the courts' equitable powers, in order to protect themselves from the ravages of organized racketeering activity. Equity has always provided a remedy to stop continuing violations of legal rights. Congress did nothing in § 1964(c) to eliminate this equitable power.

III. RICO DOES NOT REMOVE THE COURT'S POWER TO PRESERVE THE STATUS QUO THROUGH INTERIM RELIEF

Motorola's experience in dealing with racketeers confirms an additional point: the power to grant *preliminary* relief during the pendency of a RICO case is essential to the effectiveness of *any* civil remedy. District courts have such power by virtue of both the Judiciary Act and the All Writs Act. There is nothing in RICO that removes district courts' authority under these statutes to award *pendente lite* relief during the pendency of civil actions under § 1964(c).

Federal courts have always possessed the power to issue equitable relief to preserve the status quo pending resolution of cases before them. 11A Wright & Miller § 2941, at 30-31, § 2943, at 78-79, § 2947, at 121-23. Such relief is appropriate for two reasons: to prevent irreparable harm while litigation is pending, and to protect the court's power to award meaningful relief at the conclusion of the case. *Id.* § 2947, at 121, 123.

The federal courts' power to award interim relief has statutory sources distinct from the statute creating the right of action. In the first place, this power is part of the courts' equity jurisdiction, granted in the Judiciary Act of 1789. *See Grupo Mexicano*, 527 U.S. at 318-19; *Scripps-Howard*, 316 U.S. at 9-10, 13; 11A Wright & Miller § 2941, at 30-31. Additionally, federal district courts have equitable power, under the All Writs Act, to issue extraordinary writs in aid of their jurisdiction. *See* 28 U.S.C. § 1651 (2000). This Court has interpreted that power to include the power to issue preliminary injunctions to preserve the status quo pending litigation before the federal court. *See FTC v. Dean Foods Co.*, 384 U.S. 597, 603-05 (1966); *Scripps-Howard*, 316 U.S. at 10 n.4.

This Court has consistently rejected arguments that specific statutory authorization is necessary to provide interim relief in statutorily authorized actions. *See Yamasaki*, 442 U.S. at 705; *Dean Foods*, 384 U.S. at 608; *Deckert*, 311 U.S. at 288. In *Scripps-Howard*, the Court explained, "Here Congress said nothing about the power of the Court of Appeals to issue stay orders under § 402(b). But denial of such power is not to be inferred merely because Congress failed specifically to repeat the general grant of auxiliary powers to the federal courts." 316 U.S. at 11. In the area of interim remedies, the Court has been especially vigilant against inferring restriction of courts' equitable powers. Instead, the Court has insisted on explicit direction from Congress before it will restrict courts' equitable power to issue interim remedies. *See Yamasaki*, 442 U.S. 705; *Dean Foods*, 384 U.S. at 608; *Scripps-Howard*, 316 U.S. at 15; *see also Miller*, 530 U.S. at 337-41 (restricting courts' interim equitable power only in light of unmistakable mandatory language in statute).

Again, the need for interim equitable relief in civil RICO actions under § 1964(c) is well illustrated in Motorola's pending case. Judge Rakoff found a preliminary injunction

was necessary because the fraud and racketeering was ongoing, threatening continuing harm even as the case proceeded. *Motorola*, 202 F. Supp. 2d at 247-48 ("Moreover, defendants' open-ended racketeering scheme continues apace, threatening still further injury to plaintiffs' business and property."). The court pointed to defendants' effort to diminish the voting rights of the stock pledged as Motorola's collateral, and noted the likelihood that defendants would implement those resolutions unless prohibited from doing so. *Id.* at 248 & n. 4. In fact, the defendants registered the resolutions even in the face of Judge Rakoff's order not to do so, drawing a contempt citation. *Motorola*, 2002 WL 1963301.

In this context, the district court found it necessary to invoke its equitable powers in order to protect the pledged assets from further attack, prevent further diversion of the loaned funds and preserve its own power to award meaningful relief at the conclusion of the litigation. *Motorola*, 202 F. Supp. 2d at 248.[10] Because the defendants' continuing course of conduct threatened to make any eventual judgment unrecoverable, the court entered a preliminary injunction, which remains in force today.

As this history indicates, federal district courts cannot be left powerless to deal with ongoing fraudulent behavior by parties over whom they have jurisdiction. Thus federal courts have been vested with power to prevent irreparable harm, and

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[10] The court correctly noted that *Grupo Mexicano*, 527 U.S. 308, did not bar relief, because the injunction was not merely to preserve assets for collection of an unsecured debt, but instead was to prevent dissipation of assets subject to plaintiffs' equitable interest. *Motorola*, 202 F. Supp. 2d at 250. *Grupo Mexicano* addressed a preliminary injunction that restrained a party's *lawful* disposition of its own unencumbered property, to support eventual collection of an unsecured debt. It expressly distinguished preliminary injunctions that restrain unlawful conduct, and preserve assets subject to equitable liens. *Grupo Mexicano*, 527 U.S. at 314-15, 325.

to preserve assets that will be subject to the court's eventual judgment. *See Scripps-Howard*, 316 U.S. at 9-10; *Deckert*, 311 U.S. at 286, 288-90; 11A Wright & Miller, § 2947, at 121-23. It would be extraordinary to suggest that a district court confronted with ongoing criminal behavior designed to funnel assets beyond the reach of the court must stand idly by, waiting to award only an eventual money judgment that in the meantime may be made practically worthless.

The suggestion is particularly inapt in the context of a statute that is to be construed liberally for remedial purposes. As noted, the § 1964(c) action is intended "not merely to compensate victims but to turn them into prosecutors, 'private attorneys general,' dedicated to eliminating racketeering activity." *Rotella*, 528 U.S. at 557. "The provision for treble damages is . . . justified by the expected benefit of suppressing racketeering activity, an object pursued the sooner the better." *Id.* at 558. It would be anomalous, to say the least, to conclude that a business currently victimized by ongoing racketeering activity may sue for treble damages as the harm accumulates, but may not obtain the court's protection to stop the crime in progress.[11]

Indeed, it is hard to fathom how an exclusive treble damages remedy would work at all where a vigilant plaintiff is met by determined wrongdoers. It is all too common, as in Motorola's case, for racketeers to seek to defraud investors or creditors by draining the assets of a company under their control. *See, e.g., Motorola*, 202 F. Supp. 2d at 249 (noting

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[11] For this reason, the Court should reject any suggestion that interim relief is available only in suits brought by the government under § 1964(b). It would make little sense for Congress to have provided racketeering victims a remedy to restrain racketeering activity permanently under § 1964(a) and § 1964(c), but to have denied the ability to suppress it immediately where it is presently ongoing. *See Rotella*, 528 U.S. at 558 (noting suppression of racketeering activity is "an object pursued the sooner the better").

appropriateness of RICO action "when a corporation fraudulently is caused to issue debt and stripped of its assets in a manner that obviously will leave creditors unpaid") (citation omitted). In such a case, if no interim relief were available to stop the diversion of assets, the defrauded creditor would either have to bring multiple damages suits, to recoup its losses on an ongoing basis, or wait until the conclusion of the illegal scheme—and the complete disappearance of the assets—to bring one suit for all losses. Neither course makes sense. These outcomes would be all the more inexplicable under a statute that places a premium on broad remedies and effective enforcement.

Because this case comes up on review of a permanent injunction, the issue of preliminary relief is before the Court only insofar as it may be related to the permanent injunction question. For the reasons stated above, the Court should affirm that *both* permanent and preliminary equitable relief are available in suits brought by racketeering victims under § 1964(c). But in any event, the Court should clarify that RICO does not remove the district courts' traditional equitable power, founded on different statutory sources, to preserve the status quo and prevent irreparable harm while litigation is pending.

CONCLUSION

For the foregoing reasons, this Court should affirm the court of appeals' ruling that district courts may grant injunctive relief in civil actions brought under § 1964(c).

Respectfully submitted,

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